REMARKS

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

Regarding the Rejection under 35 U.S.C. §112

Claims 1, 11, 18, 19, 24 and 30 have been amended to address the action to be taken when the condition is not met by the conditional statement in each claim as noted by the Examiner. The presented amendments to the claims traverse the rejection under 35 U.S.C. §112, hence, reconsideration is respectfully requested.

Regarding the Rejections under 35 U.S.C. §103

All claims were rejected as being unpatentable over the So reference of record in view of the newly cited Colligan reference. The So reference relates to a video-on-demand (VOD) system that uses conditional access methods in conjunction with ECM retrofitting to control access to pre-encrypted VOD content. The Colligan reference relates to a VOD system for the distribution of encrypted video encrypted using one of a number of encryption means as decided by predetermined criteria to reduce the amount of encryption and decryption for a VOD stream and renewing an encryption method to maintain VOD security.

Regarding Claims 1,11,18,19,24, and 30

Applicant would like to point out that the office action states that "So's invention...recognizes that prior art for VOD distribution does teach encryption after each request" and references paragraphs [0014] and [0015] of the So reference in support. However, what the So reference actually teaches in these paragraphs is that real-time encryption in VOD systems is disadvantageous as in terms of time, space requirements, and cost. Therefore, So actually teaches against "real time" encryption based on demand for particular content, where Applicant embraces it. Therefore, encryption for VOD streams is done prior to any selection and stored such that time and space challenges may be minimized when a subscriber selects any given VOD channel. The So reference is completely silent on whether it is desirable to be able

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to service multiple types of set-top boxes to expand a client base, as asserted. In fact, in the marketplace, VOD systems from competing vendors are wholly incompatible. Contrary to the Office's assertion, the two major venders of set-top boxes, who together control an overwhelming segment of the market (nearly all of it in the United States) for set-top boxes, are rivals in the marketplace, have incompatible proprietary encryption systems, and each discourages customers from using the others equipment. As a result, no vender has historically, and at the time of the present invention, been able to supply VOD content to equipment other than that licensed by a single supplier. The two competing systems simply do not mix in the real world. It is Applicant's novel and unobvious application of multiple selective encryption concepts that renders such a mixed system viable. So is silent on this problem.

Colligan does not remedy the problem of providing the ability to service multiple types of set-top boxes to expand a client base. In fact, Colligan and So provide contradictory teachings as to "real time" encryption, as well. Although Colligan does provide a discussion of using selective encryption, the Colligan reference is silent as to using real time encryption coupled with a decision as to which type of receiver is to receive the content in order to determine which encryption system to use. Thus, the combination of So and Colligan does not teach, suggest or imply using real time encryption with a decision as to which type of encryption to use for content encryption as recited in Applicant's disclosure, or the claims to the process and apparatus.

The Office Action presents the argument that the So reference is directed to a VOD method "that provides session based encryption", and directs attention to paragraphs [0045] and [0106] in support of this argument. However, paragraph [0045] clearly describes "a content preparation system (CPS) for pre-encrypting content" that is then available "for distribution to subscriber on an on-demand basis". As disclosed, the content is already encrypted and waiting in queue for incoming service demands, this is not the same as encrypting content when requested by a subscriber session manager. The So reference discloses in paragraph [0034] that the So system "allow(s) content to be encrypted once" and that once encrypted this "content has an indefinite lifetime". Rather than being session based, it is clear that the So reference highly preferentially encrypts content once, then transports the content on demand as needed.

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The argument is also presented that So teaches "routing the first portions to a first encryption device that encrypts content for decryption under the first encryption method for VOD session" and "routing the second portions around the first encryption device" in paragraph [0051]. There is no teaching in paragraph [0051], nor in the remainder of the So reference, that shows either of these elements. Paragraph [0051] teaches that the CPS "encodes content in a format suitable for storage on video servers and for distribution to the subscriber terminals". At no point does it teach that portions of a VOD stream may be selectively encrypted, or that second portions of a VOD stream are actively routed around this encryption step, as is disclosed in the submitted claims. At most, paragraph [0051] teaches that an encrypting step may not be necessary as "content is already available in the suitable format", simply teaching that data encrypted using a single type of encryption is being retrieved from the data store disclosed previously by So.

The So reference appears to deal only with one type of encryption at a time, despite references to multiple "systems". The systems would appear to require compatible decryption capabilities in order to provide the proper encryption functionality from sender to receiver, a fact that So seems to acknowledge through the reference of Motorola proprietary systems in at least Paragraphs [0054] and [0111]. It is noted that the ASIC devices described by So are only believed to be compatible with the Motorola proprietary system.

The Colligan reference does not remedy this situation as this reference also deals with only one type of encryption at a time. Neither reference addresses the basic issue, as recited in Applicant's disclosure, of making two competing encryption schemes compatible on the same network in a VOD environment. Since neither reference addresses this basic issue, the combination of So and Colligan cannot teach, suggest or imply this recited property of Applicant's disclosure as reflected in the claims.

The Office Action also asserts that the So reference teaches a system that "encrypts the content according to capabilities of the requesting terminal, and won't perform any encryption that cannot be decrypted by the receiving terminal", but does not present any attribution from the So reference in support of this assertion. It is requested that, if the Office Action maintains this

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assertion, that the attribution within the reference be cited for clarity on the record and for due consideration by Applicant.

The Office Action further presents the assertion that the So reference teaches "assembling a stream of selectively encrypted content from the encrypted first portions and the second portions to produce a selectively encrypted stream of content" and looks to paragraph [0106] in support of this assertion. Paragraph [0106] of the So reference does little more than define selective encryption in one context. Paragraph [0106] of the So reference describes a stream composed of portions that are encrypted or not encrypted, but not "assembling a stream of selectively encrypted content from the encrypted first portions and...the encrypted second portions" as recited in Applicant's claims. So does not disclose or suggest "assembling a stream of selectively encrypted content from the encrypted first portions and...the encrypted second portions" with selection between multiple encryption methods and multiple encrypters as taught and claimed by Applicant. It is noted that the computations provided in paragraphs [0015] through [0017] clearly demonstrate that So has no appreciation for the benefits that selective encryption can provide toward solving the very problem he is addressing using ECM retrofitting and pre-encryption, much less the problem addressed by Applicant.

Applicant would also like to point out that the newly cited Colligan reference does not remedy this shortcoming. In support of the concept of selective encryption, the Office Action directs Applicant to figures 12-14 and associated text. The cited portions of the Colligan reference state that packets can be selectively encrypted, but the packets are encrypted as one type throughout the VOD stream. There is no teaching whatsoever of a VOD stream having content that has been selective encrypted so that a first portion is encrypted and a second portion is clear, with the encryption being carried out using either a first encryption means or a second encryption means within the same VOD session based upon the capabilities of the receiver as claimed. Moreover, there is no teaching of selective encryption.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claims 1, 11, 18, 19, 24, and 30 are obvious. Accordingly, reconsideration and allowance are respectfully requested.

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Regarding Claims 2-10

Claims 2-10 are dependent from claim 1. Although additional distinctions exist, in view of the above clear failure of So and Colligan to meet each feature of claim 1, these claims need not be further addressed at this time, since they exhibit at least the same distinctions over So and Colligan.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claims 2-10 are obvious. Accordingly, reconsideration and allowance are respectfully requested.

Regarding Claims 12-17

Claims 12-17 are dependent from claim 11. Although additional distinctions exist, in view of the above clear failure of the So and Colligan references to meet each feature of claims 12-17, these claims need not be further addressed at this time, since they exhibit at least the same distinctions over the So and Colligan references.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claims 12-17 are obvious. Accordingly, reconsideration and allowance are respectfully requested.

Regarding Claim 18

Claim 18 is an apparatus claim having features similar to those discussed above in connection with claim 1.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claim 18 is obvious. Accordingly, reconsideration and allowance are respectfully requested.

Regarding Claim 19

Claim 19 has features similar to those discussed in connection with claim 11.

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In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claim 19 is obvious. Accordingly, reconsideration and allowance are respectfully requested.

Regarding Claims 20-23

Claims 20-23 are dependent from claim 18. Although additional distinctions exist, in view of the above clear failure of So and Colligan to meet each feature of claim 18, these claims need not be further addressed at this time, since they exhibit at least the same distinctions over the So and Colligan references.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claims 20-23 are obvious. Accordingly, reconsideration and allowance are respectfully requested.

Regarding Claims 25-33

Claims 25-33 are dependent from claim 24. Although additional distinctions exist, in view of the above clear failure of So and Colligan to meet each feature of claim 24, these claims need not be further addressed at this time, since they exhibit at least the same distinctions over the So and Colligan references.

In view of the above, it is clear that the combination of So and Colligan fails to provide the teachings needed to establish that claims 25-33 are obvious. Accordingly, reconsideration and allowance are respectfully requested.

Concluding Remarks

Per MPEP 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Moreover, to establish a *prima facie* case of obviousness over Applicants' claims the So and Colligan references must teach or suggest each and every element of the claims in the arrangement called out in the claims. In view of the above, there is clear failure to establish a *prima facie* case of obviousness. Moreover, the So reference clearly teaches away from techniques that do not use an off-line pre-
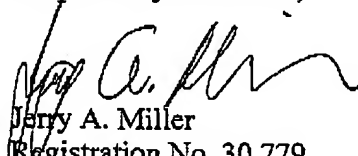
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encryption technique (see, for example, paragraphs [0015] and [0016]). In view of this, they are clearly not rendered *prima facie* obvious by So and Colligan. Accordingly, reconsideration and allowance are respectfully requested at an early date.

The undersigned additionally notes that many other distinctions exist between the cited art and the claims. However, in view of the clear distinctions pointed out above, further discussion of each distinction is clearly unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of a telephone or personal interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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